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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Communications Assistance For ) CC Docket No. 97-213  
Law Enforcement Act )

**COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

**NEXTEL COMMUNICATIONS, INC.**

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### SUMMARY

The Communications Assistance For Law Enforcement Act ("CALEA") was enacted by Congress in 1994 to assist law enforcement agencies' efforts by requiring certain wireless telecommunications carriers to cooperate in the interception of communications for law enforcement purposes. CALEA recognizes that the design of advanced wireless telecommunications systems and the interests of law enforcement agencies in intercepting certain communications are not necessarily consonant, and it strikes a balance between them. That balance guides Nextel's responses to the issues raised in the Federal Communications Commission's (the "Commission") CALEA implementation rule making.

Congress authorized the Commission to exclude from CALEA certain services that may be provided by carriers that fall within the definition of "telecommunications carrier" in the statute. Nextel respectfully submits that traditional analog Specialized Mobile Radio ("SMR") systems, which do not utilize intelligent switching capability or offer seamless handoff to customers, and digital push-to-talk dispatch services should be exempt from CALEA obligations because compliance therewith is not "reasonably achievable" within the meaning of the statute. The extensive technical modifications and system re-design that would be required to bring these services into compliance cannot be accomplished in a cost effective manner and would have a significant adverse impact on the systems' capacity and competitiveness.

Additionally, the Commission should establish safe harbor recordkeeping and administrative standards for carriers to protect them from acts of employees that are inconsistent with those standards, and the Commission should provide a transition period during which new entrants, such as Nextel, Personal Communications Services providers and competitive local exchange carriers, can establish CALEA administrative processes. Unlike cellular and incumbent local exchange carriers, these providers do not have established processes in place.

Finally, Nextel supports carriers' rights to seek extensions of CALEA deadlines, particularly given the delays encountered by the industry in attempting to establish CALEA capability standards. Because the industry just recently established a CALEA capability standard, it is unlikely that any carrier will be CALEA compliant as of October 25, 1998 -- the date specified in the statute. Therefore, carriers should have the ability to petition the Commission for additional time to achieve compliance.

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**COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

**I. INTRODUCTION**

Pursuant to Section 1.429 of the Rules of the Federal Communications Commission ("Commission") and the Notice of Proposed Rule Making ("Notice") in the above-captioned docket,<sup>1/</sup> Nextel Communications, Inc. ("Nextel") respectfully submits these Comments on the Communications Assistance For Law Enforcement Act ("CALEA").<sup>2/</sup>

CALEA was enacted by Congress in 1994 to assist law enforcement agencies' efforts by requiring certain wireless telecommunications carriers to cooperate in the interception of communications for law enforcement purposes. CALEA recognizes that the design of advanced wireless telecommunications systems and the interests of law enforcement agencies in intercepting certain communications are not necessarily consonant, and it attempts to strike a balance between them. Accordingly, Congress specifically provided that law enforcement agencies cannot "require a specific design of equipment, facilities, services, features, or system

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<sup>1/</sup> Notice Of Proposed Rule Making, CC Docket No 97-213, released October 10, 1997.

<sup>2/</sup> Pub.L.No. 103-414, 108 Stat. 4279 (1994).

configurations. . ." or "prohibit the adoption of any equipment, facility, service, or feature. . ."3/ Moreover, Congress stated that CALEA obligations apply only to the extent they are "reasonably achievable" by a telecommunications carrier.4/

CALEA requires the telecommunications industry to establish technical requirements and standards for meeting the statute's law enforcement assistance requirements.5/ These standards, if established by the industry, act as a safe harbor for all carriers complying with them. To the extent a carrier determines that industry-established standards are not "reasonably achievable," it can seek an extension of time for compliance. Nextel asserts herein that there are some Commercial Mobile Radio Services ("CMRS") for which the industry cannot develop "reasonably achievable" compliance standards. In those cases, the Commission should exempt those services from CALEA compliance pursuant to its authority in Section 102(8)(c)(2).

## **II. BACKGROUND**

Nextel is the Nation's largest provider of traditional and wide-area Specialized Mobile Radio ("SMR") services. Traditional SMR services, which were first licensed by the Commission in the late 1970's, are push-to-talk dispatch communications with limited interconnection provided on a localized basis, typically employing analog technologies. A traditional SMR system consists of a single

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3/ CALEA, Section 103(b)(1).

4/ See CALEA at Sections 107(c)(2); 108(a)(2); and 109(b)(1).

5/ CALEA, Section 107(a)(2).

high-power, high-site radio tower and has no intelligent switching capability, no call-hand off and no channel re-use. As a result, traditional analog services are not spectrally efficient and generally do not provide secure communications for their users, which typically include messenger services, delivery companies and other businesses with a fleet of workers spread throughout a local area during working hours.

Nextel's wide-area digital services provide users a unique combination of telecommunications services in a single handset, including mobile telephone, paging and an enhanced "push-to-talk" dispatch or instant conferencing service (also known as "Direct Connect"). The mobile telephone and paging services on Nextel's digital systems require interconnection with the Public Switched Telephone Network ("PSTN") to enable telephone calls to any other user connected to the PSTN throughout the world. The Direct Connect service, however, is not connected to the PSTN, and enables communications only with other members of the same "fleet" located within a pre-defined geographic area. Therefore, as a provider of certain interconnected mobile services that may be subject to CALEA compliance, Nextel has a significant interest in this proceeding and the impact CALEA requirements may have on its provision of service to the public.

### III. DISCUSSION

#### A. Scope of CALEA Application

In the Notice, the Commission requests comment on the scope of CALEA's applicability.<sup>6/</sup> In Section 102(8) of CALEA, Congress defined "telecommunications carriers" to include providers of CMRS.<sup>7/</sup> CMRS are those mobile services that are interconnected to the PSTN and are provided to the public (or a substantial portion thereof) for a profit.<sup>8/</sup> The Commission has concluded that the CMRS classification encompasses all cellular, all PCS, and those SMRS that are interconnected to the PSTN.<sup>9/</sup>

The Commission has recognized, however, that the CMRS regulatory classification does not mean that all such services should be subject to the very same regulatory obligations.<sup>10/</sup> For example, in the Third Report and Order in GN Docket No. 93-252,<sup>11/</sup> the Commission stated: "[W]e do not believe that all substantially similar services must have identical technical and operational rules, especially if the imposition of such identical rules would require carriers to reconfigure their services in ways

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<sup>6/</sup> Notice at paras. 15-16.

<sup>7/</sup> 47 U.S.C. Section 332(d).

<sup>8/</sup> 47 U.S.C. Section 332(d)(1).

<sup>9/</sup> Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994) at paras. 82 et seq.

<sup>10/</sup> See *Id.* at para. 162 wherein the Commission recognized in 1994 that "differential regulatory treatment of different classes of CMRS providers may become warranted because of rapidly changing circumstances in the CMRS marketplace."

<sup>11/</sup> 9 FCC Rcd 7988 (1994)



that could adversely affect their ability to compete."12/ More recently, the Commission excluded certain interconnected SMR systems from wireless 911 and Enhanced 911 obligations otherwise applicable to CMRS carriers.13/ The obligations, the Commission concluded, should apply only to those SMR networks that "utilize intelligent switching capability and offer seamless handoff to customers."14/

The Commission has authority under Section 102(8) of CALEA to specifically exclude from the CALEA obligations "any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General."15/ Nextel urges the Commission to consider such exemptions for certain dispatch-type communications services pursuant to the criteria for determining whether compliance with the statute is reasonably achievable, as set forth in Section 109 of CALEA. These are:

- (A) The effect on public safety and national security.
- (B) The effect on rates for basic residential telephone service.
- (C) The need to protect the privacy and security of communications not authorized to be intercepted.
- (D) The need to achieve the capability assistance requirements of section 103 by cost-effective methods.

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12/ Id. at para. 79,

13/ Order, CC Docket No. 94-102, DA 97-2530, released December 1, 1997.

14/ Id.

15/ CALEA, Section 102(8)(C)(ii).

(E) The effect on the nature and cost of the equipment, facility, or service at issue.

(F) The effect on the operation of the equipment, facility, or service at issue.

(G) The policy of the United States to encourage the provision of new technologies and services to the public.

(H) The financial resources of the telecommunications carrier.

(I) The effect on competition in the provision of telecommunications services.

(J) The extent to which the design and development of the equipment, facility, or service was initiated before January 1, 1995.

(K) Such other factors as the Commission determines are appropriate.

Based on these factors, Nextel concurs that most CMRS services fall within the scope of CALEA's obligations. However, CALEA obligations would have severe adverse technical, operational and financial impacts on (1) SMR systems that do not utilize intelligent switching capability and offer seamless handoff to customers (referred to herein as "traditional analog SMR"), and (2) digital push-to-talk dispatch services that are offered on a stand-alone basis or as a unique feature in a package of interconnected services. Imposing substantial technical, operational and financial burdens on these services and their providers would run counter to the Commission's goals of promoting advanced technologies and a competitive telecommunications marketplace. Digital push-to-talk services were developed and implemented in response to consumer demand and the Commission's interest in promoting new technologies. Applying CALEA to such services will

have a detrimental impact on such innovation in the future, in contravention of Section 109(g).

A service-by-service determination of CALEA's applicability is required by the fact that a single carrier may provide both CMRS and private mobile radio services. For example, Nextel is a common carrier to the extent it provides interconnected two-way mobile phone service to which CALEA obligations should apply. This does not, however, justify CALEA's imposition on its non-interconnected services for which there is no existing wiretap or interception technology. The Commission, therefore, should find that imposing CALEA on traditional analog SMR systems and digital push-to-talk services is not reasonably achievable under any time frame.

1. Traditional Analog Services. As explained above, traditional analog SMR services are provided on telecommunications systems that have no intelligent in-network switching capabilities and which typically operate on only five, 10 or 20 channels. Because the system has only one tower covering a large geographic area (typically up to a 35-miles radius of the tower), there is no channel re-use or call hand-off capability, thus severely restricting the system's capacity. Without these advanced technological attributes, each channel on a traditional SMR system can only be used by one subscriber at a time within the entire coverage area. Moreover, traditional analog SMR systems offer their users little privacy or security.<sup>16/</sup>

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<sup>16/</sup> Nextel notes that a major impetus for CALEA was the development of digital wireless transmission technologies, making it significantly more difficult to intercept wireless

Some analog dispatch systems have limited interconnection to the PSTN, thus allowing subscribers to make telephone calls in addition to push-to-talk dispatch calls to other members of their fleet. Typically, this interconnect capability is limited in that no customer on the analog system is assigned its own telephone number, no customer is assured the ability to make a phone call at any time, and there is no switching capability on the system. Rather, the system's single tower is assigned one or more telephone lines (i.e., the telephone numbers are associated with the radio system rather than an individual user) to allow limited telephone calls. Thus, subscribers making an interconnected calls must share the limited lines and wait until one is available, i.e., not in use by another subscriber, before placing a call.<sup>17/</sup>

There are thousands of traditional SMR systems, operated by independent businesses, throughout the country. These systems have been providing dispatch services to other businesses (typically messenger services, delivery companies and other companies with fleets of users dispersed throughout a local area) for some twenty years. Throughout this time, law enforcement officials have shown relatively little interest in or need to intercept communications on traditional analog SMR systems. This is due perhaps, in part, to the minimal security and privacy expectations of analog dispatch

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communications. Traditional analog systems have few of the attributes that CALEA was intended to address.

<sup>17/</sup> Some analog interconnected systems permit subscribers to receive incoming calls through the use of a personal identification number, which must dialed by the caller after reaching the SMR system.

communications users, and the unsuitability of such technology for suspect communications.

Accordingly, exempting traditional SMR services from CALEA compliance would not have a significant impact on the ability of law enforcement agencies to carry out their public safety or national security responsibilities. In fact, intercepting analog SMR communications can be accomplished in other, already-established ways, such as: (1) tapping interconnected calls at the Local Exchange Carrier ("LEC") or (2) through monitoring.

Moreover, application of CALEA to traditional analog SMR services cannot be achieved through cost-effective methods as Nextel is unaware of any existing wiretap technology for non-interconnected, fleet dispatch communications. CALEA obligations would significantly impact the nature and cost of analog SMR equipment and systems, most of which were developed well before January 1, 1995, and reserving CALEA capacity would certainly have an adverse impact on the operation and profit-margins of traditional analog SMR systems, given their limited typical five, 10 or 20-channel capacity. Upgrading an analog SMR system to comply with the panoply of CALEA requirements would require significant financial resources relative to most analog SMR operators' total resources. These systems operate on very limited capacity, provide service to a relatively small number of users and are typically operated by small businesses. To develop the technology necessary to tap a push-to-talk non-interconnected communication would be very costly, of limited value (given the

interest level shown by law enforcement in the past), and would likely put many SMR companies out of business. Analog SMR operators established their systems for the purpose of providing service to the public; they did not establish systems for the purpose of law enforcement usage. The Commission, therefore, should recognize this distinction, recognize the adverse impacts CALEA would have on traditional SMR services, and exempt them from CALEA obligations.

Just as the Commission has concluded in other proceedings, certain regulatory obligations should not be applicable to an interconnected traditional SMR system, even though it may be providing limited CMRS services.<sup>18/</sup> The mere fact that limited interconnection capability results in the reclassification of a traditional private mobile SMR system as CMRS does not justify subjecting it to CALEA obligations.

2. **Digital Push-to-Talk Services.** Similarly, Nextel's digital push-to-talk services are not interconnected to the PSTN, there is no available intercept technology for non-interconnected push-to-talk communications, and bringing these services into compliance with CALEA is not reasonably achievable. Section 107 of CALEA establishes a safe harbor for carriers' CALEA compliance, i.e., if carriers have implemented "publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission . . .",

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<sup>18/</sup> See Order, *supra*. at fn. 13, carving out traditional SMR systems from the wireless 911 and E911 obligations due to technological limitations on such systems.

carriers are considered to be in compliance with CALEA's capability requirements.<sup>19/</sup> In the case of digital push-to-talk services like Nextel's Direct Connect service, however, there is no industry or Commission-established standard because there is no technology available that will intercept such communications. In these circumstances, the Commission should exempt such services from CALEA compliance.

Nextel's Direct Connect service, for example, allows a group of callers to communicate simultaneously through a "group call." When a caller initiates such group communications, the system does not account for or recognize which mobile units or how many actually respond to the call. Rather, the system "lights up" the cell site on which a group member is operating without regard to which group member it is. If any other group member is also operating on the same cell, it too can participate in the group call, but the system does not trace its participation. In other words, there is no way to trap or trace a particular group member's call on the push-to-talk service, and therefore no information to deliver to law enforcement agencies (except for the party that initiated a group call).

If Nextel were required to make its digital push-to-talk service CALEA compliant, it and its vendors would have to fundamentally re-work the call set-up and call completion process for push-to-talk communications. Moreover, to track every single participant on a group call would require dedicating to each group

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<sup>19/</sup> CALEA, Section 107(a)(2).

member a separate channel, thus consuming far more capacity on Nextel's system than the current design, resulting in severe spectrum inefficiency, and increasing the cost of dispatch calls to consumers. What this demonstrates is: the mere fact that a push-to-talk service uses digital technology, and is offered as part of an integrated package with an interconnected cellular-type service, does not *ipso facto* make CALEA compliance reasonably achievable within the meaning of the statute.

Applying the factors set forth in Section 109 evidences the unreasonableness of applying CALEA's obligations to the digital push-to-talk service. Nextel has implemented this technology in response to consumer demand and Commission initiatives to provide new technologies and services to the public. Additionally, Nextel's provision of digital push-to-talk services has helped increase competition in the wireless marketplace by providing a unique alternative to cellular and PCS services.

Creating the technological advances necessary to intercept digital push-to-talk communications, as explained above, cannot be reasonably achieved in a cost-effective means or in a manner that would not have a significant impact on the nature of the system, its equipment, the manner in which it operates and the cost of the service. To trace a particular push-to-talk group member, the efficiency of Nextel's system would be undercut and its design completely re-worked. Additionally, information associated with a push-to-talk call, e.g., call set-up and other call-identifying information, is not maintained by the system any longer than is



necessary to complete the call. Therefore, gathering such information and providing it to law enforcement also would require significant fundamental changes.

These system modifications would be costly to develop and even more costly to implement. As noted above, some technical experts in the manufacturing sector claim that intercepting digital dispatch communications could require that the entire digital dispatch system be re-worked -- a result at odds with Section 103(b) of CALEA.<sup>20/</sup> The cost of redesigning the systems and implementing new technologies, moreover, would have a significant impact on subscriber prices and could adversely impact the competitive position of Nextel's unique digital dispatch offering.

Each of these results is inconsistent with CALEA and the considerations set forth in Section 109 for determining whether CALEA compliance is reasonably achievable. Because digital push-to-talk communications are not interconnected to the PSTN, and there is no methodology for interfacing law enforcement systems with these dispatch systems, CALEA would force Nextel and its manufacturers to redesign equipment, facilities and service simply to facilitate law enforcement access. Applying all of the factors set forth in Section 109, therefore, the Commission should conclude

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<sup>20/</sup> Section 103(b)(1)(A) states that CALEA does not authorize law enforcement "to require any specific design of equipment, facilities, features, or system configurations to be adopted by any provider of a wire or electronic communications service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services. . ."

that CALEA implementation on Nextel's digital push-to-talk service is not reasonably achievable.

**B. Administrative Processes and Fines**

Nextel disagrees with the Commission's conclusion in the Notice that the cost of implementing CALEA's administrative processes will be minimal for most carriers.<sup>21/</sup> This conclusion ignores the marketplace reality that there are a number of new entrant providers offering telecommunications services to the public. While cellular providers and incumbent LECs may have established wiretap compliance teams and processes, new entrants such as Nextel, PCS carriers and competitive LECs, have not had the opportunity to establish internal processes. Therefore, the cost of compliance for these new entrants will be far from minimal -- particularly for those carriers such as Nextel that are building out nationwide systems.

Small businesses, therefore, are not the only providers that may find themselves facing significant implementation costs.<sup>22/</sup> To ease this financial burden, the Commission should provide a transition period for (a) CALEA recordkeeping and (b) carrier protection from civil and criminal liability. This transition period would allow carriers much-needed time to come into compliance with CALEA administration while protecting them from liability during the transitional time period.

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<sup>21/</sup> Notice at para. 74.

<sup>22/</sup> *Id.* at para. 73.

Recordkeeping, moreover, should be streamlined to enable nationwide carriers such as Nextel to come into compliance without being required to add numerous new personnel solely for CALEA compliance. The Commission should explicitly state the parameters of CALEA intercept procedures and recordkeeping requirements, thereby creating a safe harbor for all telecommunications carriers that are required by CALEA to "ensure that any interception of communications or access to call-identifying information effected within its switching premises can be activated only in accordance with a court order or other lawful authorization. . ."<sup>23/</sup> To the extent the Commission creates a safe harbor and a carrier complies therewith, that carrier would be protected from liability should an employee fail to comply with the carrier's CALEA processes. Additionally, the Commission's Section 503(b) penalties are unnecessary for carriers' failure to comply with CALEA since Title 18 of the U.S. Code already provides adequate penalties for non-compliance.

**C. Extended Compliance Date**

CALEA provides the Commission authority to extend the compliance date where a carrier has demonstrated that compliance is not reasonably achievable within the CALEA time frames.<sup>24/</sup> Nextel supports carriers' rights to seek extensions, particularly given the delays encountered by the industry in attempting to establish CALEA capability requirements. Because the industry just

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<sup>23/</sup> CALEA, Section 105.

<sup>24/</sup> CALEA, Section 107(c).

recently established a CALEA capability standard, it is unlikely that any carrier will be CALEA compliant as of October 25, 1998 -- the date required by Congress. Therefore, carriers should have the ability to petition the Commission for additional time.

#### **IV. CONCLUSION**

Although CALEA is applicable to most CMRS services, the Commission should not rubber stamp the obligations on all such carriers without first considering whether compliance is reasonably achievable for each of their individual service offerings. Applying the criteria in Section 109 of CALEA, the Commission will find that application of CALEA obligations to traditional analog SMR systems and non-interconnected digital push-to-talk services is not reasonably achievable. The cost of such compliance, and the impact on the systems' operations, technologies and functions, would alter the manner in which those services are provided today. Therefore, each of these services should be exempt from the requirements of CALEA.

Additionally, the Commission should establish safe harbor requirements for complying with the administrative processes of CALEA. Once the safe harbor is established, carriers should not be liable for acts of employees who fail to comply with the carrier's established policies. Moreover, new entrants should be provided a transition period for complying with the administrative processes imposed by CALEA since they currently have little to no CALEA processes in place.

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Finally, given the continuous delays the industry has experienced in shaping technological standards for CALEA compliance, carriers should have the ability to seek extensions of the CALEA compliance date.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert S. Foosaner", written over a horizontal line.

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## CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 12th day of December, 1997,  
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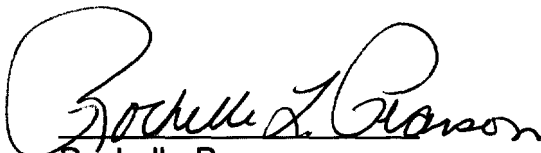
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